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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL SANZARO,

Plaintiff(s),

v.

VALORIE J. VEGA, et al.,

Defendant(s).

2:12-CV-1980 JCM (PAL)

ORDER

Presently before the court is the report and recommendation of Magistrate Judge Peggy Leen (doc. # 2) regarding *pro se* plaintiff Michael Sanzaro's complaint (doc. # 3). Plaintiff filed an objection to the report and recommendation (doc. # 4). Plaintiff also filed a motion to transfer. (Doc. # 5). Defendants District Court Judge Valorie J. Vega and U.S. District Judge Philip M. Pro have not responded.

I. Factual background

Plaintiff brought the instant action attempting to state claims for violations of his constitutional rights under the First, Fifth, Ninth, and Fourteenth Amendments. Plaintiff filed a lawsuit before this court, which is now closed, as case no. 2:11-cv-01143-PMP-RJJ. Plaintiff alleges that Judge Pro issued an order dismissing plaintiff's complaint because the claims raised in the complaint were litigated in Nevada state court. Plaintiff asserts that this is untrue, and that Judge Pro's dismissal of plaintiff's federal case deprived plaintiff of due process.

1 Plaintiff also alleges that Judge Pro denied plaintiff's motion for reconsideration and that
 2 Judge Pro's order was in error because plaintiff's motion was a motion to void the order due to fraud
 3 upon the court by defendants and their counsel.

4 Additionally, plaintiff alleges that Judge Vega entered an order in case no. A600811 in
 5 Nevada state court confirming an award entered in a non-binding arbitration to which plaintiff was
 6 a party. Plaintiff alleges that Judge Vega's order violated plaintiff's constitutional rights because the
 7 arbitrator lacked jurisdiction, was negligent, and committed fraud. Plaintiff also alleges that Judge
 8 Vega inappropriately heard (or did not hold a hearing) and considered several motions at one time,
 9 instead of considering them separately.

10 **II. Legal standard**

11 A party may file specific written objections to the findings and recommendations of a United
 12 States magistrate judge made pursuant to Local Rule IB 1–4. 28 U.S.C. § 636(b)(1)(B); D. Nev. LCR
 13 IB 3–2. Upon the filing of such objections, the district court must make a de novo determination of
 14 those portions of the report to which objections are made. *Id.* The district court may accept, reject,
 15 or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28
 16 U.S.C. § 636(b)(1)©; D. Nev. IB 3–2(b).

17 The district court need not conduct a hearing to satisfy the statutory requirement that the
 18 district court make a “de novo determination.” *United States v. Raddatz*, 447 U.S. 667, 674 (1980)
 19 (observing that there is “nothing in the legislative history of the statute to support the contention that
 20 the judge is required to rehear the contested testimony in order to carry out the statutory command
 21 to make the required ‘determination’ ”). Rather, a hearing is required only when the district court
 22 “reject[s] a magistrate judge’s credibility findings made after a hearing on a motion to suppress.”
 23 *United States v. Ridgway*, 300 F.3d 1153, 1154 (9th Cir. 2002).

24 **III. Discussion**

25 The court limits its analysis to a *de novo* review of the portions of the report to which
 26 objections were made. *See* 28 U.S.C. § 636(b)(1)(B). Plaintiff makes one objection, that Magistrate
 27 Judge Leen’s report is based on her erroneous conclusion that plaintiff’s allegations against Judges
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1 Vega and Pro are subject to absolute judicial immunity.

2 “Judges and those performing judge-like functions are absolutely immune from damage
3 liability for acts performed in their official capacities.” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th
4 Cir. 1986). Whether a function is “judge-like” turns on several factors, like “(a) the need to assure
5 that the individual can perform his functions without harassment or intimidation; (b) the presence
6 of safeguards that reduce the need for private damages actions as a means of controlling
7 unconstitutional conduct; © insulation from political influence; (d) the importance of precedent; (e)
8 the adversary nature of the process; and (f) the correctability of error on appeal.” *Cleavinger v.*
9 *Saxner*, 474 U.S. 193, 202 (1985). Judicial actors lose immunity only where they act outside of their
10 jurisdiction or act outside of their judge-like functions. *Schucker v. Rockwood*, 846 F.2d 1202, 1204
11 (9th Cir. 1988).

12 Plaintiff argues that he included specific allegations that some of the conduct that injured
13 plaintiff was committed by defendants while defendants were acting outside the scope of their
14 apparent authority and without jurisdiction. (Doc. # 4). Plaintiff specifically cites to paragraphs 3,
15 5, 9 and 10, arguing that these paragraphs include sufficient factual matter to put the conduct that
16 he challenges outside the scope protected by judicial immunity. (*Id.*).

17 While the allegations pointed to by plaintiff reference generalities about defendants “acting
18 outside the scope” of their authority, or having “lost subject-matter jurisdiction,” or taking actions
19 that “fell outside the boundaries of their job description” plaintiff fails to acknowledge that *the*
20 *conduct* he challenges is judicial acts entitled to absolute immunity.

21 Plaintiff essentially challenges judicial orders and decisions made by Judges Vega and Pro
22 in adjudicating his prior lawsuits. He claims their erroneous decisions deprived him of due process
23 and other rights. However, each of plaintiff’s allegations against Judges Vega and Pro involve
24 judicial actions made in their official capacities—that is, performing a judicial function—thus, they are
25 entitled to absolute judicial immunity.

26 To the extent that plaintiff objects because defendants have acted without jurisdiction, none
27 of plaintiff’s allegations suggest as much. Plaintiff alleges no facts that defendants engaged in any
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1 nonjudicial action or any action in the complete absence of all jurisdiction. *See Mireles v. Waco*, 502
 2 U.S. 9, 11-12 (1991) (per curiam). To the contrary, plaintiff merely complains of decisions issued
 3 against him and routine actions during judicial proceedings. There is no plausible contention that
 4 Judges Vega and Pro lacked subject matter jurisdiction over plaintiff's cases. Defendants are
 5 therefore entitled to absolute judicial immunity.

6 To the extent that plaintiff objects because he is only seeking injunctive and declaratory relief
 7 and thus judicial immunity does not protect defendants, plaintiff fails to appreciate the breadth
 8 judicial immunity affords. "[I]f a defendant can successfully assert judicial immunity from damages,
 9 that immunity will also bar declaratory and injunctive relief." *Mothershed v. Thomson*, CV-04-2266-
 10 PHX-JAT, 2006 WL 381679, at *4 (D. Ariz. Feb. 16, 2006) aff'd, 235 F. App'x 682 (9th Cir. 2007);
 11 see, e.g., *Mullis v. U.S. Bankruptcy Court for Dist. of Nevada*, 828 F.2d 1385, 1394 (9th Cir. 1987).
 12 Thus, Judges Vega and Pro are immune from suit even though plaintiff is seeking declaratory and
 13 injunctive relief.

14 **IV. Conclusion**

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and
 17 recommendation of Magistrate Judge Peggy Leen (doc. # 2) regarding *pro se* plaintiff Michael
 18 Sanzaro's complaint (doc. # 3) be, and the same hereby is, ADOPTED in its entirety.

19 IT IS FURTHER ORDERED that plaintiff's complaint (doc. 3) be, and the same hereby is,
 20 DISMISSED with prejudice.

21 IT IS FURTHER ORDERED that plaintiff's motion to transfer (doc. # 5) be, and the same
 22 hereby is, DENIED as moot.¹

23 DATED February 5, 2013.

24 
 25 **UNITED STATES DISTRICT JUDGE**

26 _____
 27 ¹ Having dismissed plaintiff's complaint, there is nothing for the court to transfer. Even if the court were to
 28 consider plaintiff's motion to transfer on the merits, the court does not find any reason to believe that courts in this
 district would be unable to afford plaintiff fair and impartial consideration.